

**BEFORE THE**  
**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**  
**DOCKET NO. 2019-390-E**

IN RE: Ganymede Solar, LLC,	)	
	)	
Petitioner,	)	<b>DOMINION ENERGY  SOUTH CAROLINA,  INC.'S REPLY TO  RESPONSE IN  OPPOSITION TO  MOTION TO COMPEL</b>
	)	
Dominion Energy South Carolina, Inc.,	)	
	)	
Respondent.	)	
	)	

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Pursuant to S.C. Code Ann. Regs. § 103-829(A), the South Carolina Rules of Civil Procedure (“SCRCP”), and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”), Dominion Energy South Carolina, Inc. (“DESC”) replies to Ganymede Solar, LLC’s (“Ganymede”) Response in Opposition to Motion to Compel, filed on February 19, 2020, in the above-referenced docket (the “Response”). DESC’s Motion to Compel, filed on February 11, 2020, in the above-referenced docket (the “Motion to Compel”), was necessitated by Ganymede’s improper refusal to adequately respond to DESC’s First Set of Discovery Requests (“Discovery Requests”), which are attached hereto as Exhibit A and incorporated herein.

As explained in the Motion to Compel, Ganymede refused to fulfill its obligation to adequately respond to the Discovery Requests—an obligation that is well-settled under the Commission’s rules and regulations, SCRCP, and South Carolina law. Now, the Response utilizes familiar arguments and convenient mischaracterizations in furtherance of Ganymede’s overall goal to improperly stonewall DESC and the Commission from obtaining any information

to help evaluate the unsupported claims Ganymede has lobbed at the Commission within the four corners of its filings.

### **SUMMARY OF GANYMEDE'S CLAIMS**

On December 20, 2019, Ganymede initiated the instant dispute by filing a Motion to Maintain Status Quo and a Petition in the above-referenced docket—each of which named DESC as the Respondent.<sup>1</sup> Ganymede filed an amended Petition (the “Petition”) on January 24, 2020. The Petition made a number of unsupported claims to avoid making a milestone payment in accordance with Ganymede’s interconnection agreement (the “Ganymede IA”). In response to Ganymede’s filings, DESC filed (i) a Response in Opposition to Motion to Maintain Status Quo on December 30, 2019, (ii) an Answer on January 21, 2020, and (iii) an Answer to Amended Petition on January 24, 2020. Since Ganymede’s initial filings, Ganymede failed to make its second milestone payment (“Milestone Payment 2”) under the Ganymede IA. As a result, DESC terminated the Ganymede IA pursuant to its terms and removed Ganymede from the interconnection queue.

### **RELEVANT BACKGROUND**

In order to understand the basis of Ganymede’s claims in the Petition and prepare for the DESC testimony required by the Commission in this docket, DESC properly filed the Discovery Requests. Pursuant to the discovery rules implemented by the Commission’s rules and regulations, the responses to the Interrogatories and Requests for Production of Documents contained in the Discovery Requests were due on February 6, 2020, and the responses to the Requests for Admission in the Discovery Requests were due on February 17, 2020. *See* S.C. Code Ann. Regs. § 103-833; S.C. Code Ann. Regs. § 103-835; Rule 36, SCRPC.

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<sup>1</sup> Indeed, the Commission has ruled that where a Petitioner seeks relief under an interconnection agreement pursuant to a Motion to Maintain Status Quo, DESC should be “a party to the docket without having to intervene in it.” *Request of Beulah Solar, LLC for Modification of Interconnection Agreement with South Carolina Electric & Gas Company*, 2019 WL 202765, at \*1 (S.C.P.S.C. 2019).

As a result of DESC filing the Discovery Requests, Ganymede filed a Motion for Protective Order (the “Motion for Protective Order”) and Objections/Responses to DESC’s First Set of Discovery Requests (the “Objections”) on February 4, 2020, in the above-referenced docket. The Objections and the Motion for Protective Order objected, without any adequate explanation or support, to every single item contained in the Discovery Requests and inexplicably argued that all of the Discovery Requests are “moot,” “inappropriate,” and “serve no legitimate discovery purpose.” Objections at 1; Motion for Protective Order at 2. As a result, Ganymede requested the Commission toll “any requirement that Ganymede respond to [the] Discovery Requests.” Motion for Protective Order at 3. On February 5, 2020, DESC sent a deficiency letter (the “Deficiency Letter”) to Ganymede outlining the deficient discovery responses in the Objections, and offered Ganymede three days from receipt thereof to correct such deficiencies. Ganymede did not correct the deficiencies.

On February 14, 2020, DESC filed its Response in Opposition to Motion for Protective Order, and outlined the well-settled standards under South Carolina law that entitle DESC to discovery in this matter. However, Ganymede still refused to participate in the discovery process. As such, DESC was forced to file the Motion to Compel so that DESC and the Commission would have the information necessary to properly evaluate and respond to Ganymede’s claims. The Motion to Compel set forth (i) rules and regulations of the Commission, (ii) principles of the SCRCF, and (iii) well-settled case law in South Carolina that clearly warranted the Commission to compel discovery from Ganymede.

Other than the familiar and unfounded arguments that Ganymede has repeatedly offered the Commission in the seemingly ever-increasing filings Ganymede has submitted in this

docket<sup>2</sup>—and in contrast to DESC’s arguments in the Motion to Compel that were supported by a vast number of precedential rules, regulations, and case law—the Response simply relies on one case in South Carolina to support its key argument and, in doing so, blatantly mischaracterizes the precedent set forth therein.<sup>3</sup>

### **ARGUMENT**

The fundamental principle underlying the discovery process is to ensure claims are “decided by what the facts reveal, not by what facts are concealed.” *In re Anonymous Member of South Carolina Bar*, 552 S.E.2d 10, 18 (S.C. 2001) (internal citations omitted). To that end, the discovery process is governed by rules which promote “full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party.” *See id* (emphasis added). These rules are implemented to ensure a “more fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *See id* (emphasis added) (internal citation omitted).

However, Rule 26(c) of the SCRCPP allows a party from whom discovery is sought to seek protection “for good cause shown” from “annoyance, embarrassment, oppression, or undue burden by expense.” Rule 26(c), SCRCPP. To show good cause, Ganymede must demonstrate to the Commission that the discovery process in this docket “threatens to become abusive or create a particularized harm.” *Hollman v. Woolfson*, 683 S.E.2d 495, 498 (S.C. 2009); *see also Hamm v. South Carolina*, 439 S.E.2d 852 (S.C. 1994); *Gattison v. S.C. State College*, 456 S.E.2d 414 (S.C. Ct. App. 1995).

#### I. Simply uttering “particularized harm” does not make it so.

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<sup>2</sup> To date, these filings have included, among other items, a Motion for Clarification, a Motion for Expedited Hearing on Motion for Clarification, an Informational Filing, and a Response to the Directive Order and Request for Guidance.

<sup>3</sup> As discussed below, the Response employs a novel and inappropriate interpretation of *Hamm v. South Carolina*, 439 S.E.2d 852 (S.C. 1994).

Ganymede simply declares it has suffered a “particularized harm” and, by merely making this statement, seems to believe it has met its burden and sufficiently shielded itself from its discovery obligations. *See* Response at 2. Not only does Ganymede essentially rule in its favor that it has met its burden, it takes the extraordinary step of declaring that the burden is now on DESC to rebut the same. *See id.* To be clear, the Commission has made no finding that Ganymede met its burden. Once again, Ganymede mistakenly believes that simply making a filing in this docket is equivalent to a Commission ruling in its favor on the same.<sup>4</sup> Indeed, Ganymede misses the critical point in its reliance on *Hamm v. South Carolina*, 439 S.E.2d 852 (S.C. 1994). There, the court decided—not the party submitting the filing—that DESC “met its burden” of demonstrating a particularized harm. *See Hamm* at 854. According to Ganymede’s logic, parties in front of the Commission that wish to shift the burden can do so by simply declaring such in a pleading.

Although the Commission has made no finding on Ganymede’s unsupported claims in the Motion for Protective Order, the Commission has given all parties appearing before it clear rules, regulations, and precedent on the discovery obligations applicable *ab initio*.<sup>5</sup> Ganymede has not provided the adequate support necessary to obtain an order from the Commission shielding Ganymede from these well-settled obligations, and the Response is a strained effort to twist South Carolina law into an unrecognizable form of itself in order to provide some justification for Ganymede’s claims that have so far gone wholly unsupported.

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<sup>4</sup> Ganymede has alleged multiple times in this docket that its obligations under the Ganymede IA should be tolled simply because it filed a Motion to Maintain Status Quo requesting the same. *See, e.g.,* Petition at 4 (“DESC takes the remarkable position that DESC can ignore Ganymede’s filings . . . [and] declare Ganymede in default.”) (emphasis added).

<sup>5</sup> *See, e.g., Application of Daufuskie Island Utility Company*, 2017 WL 4864953, at \*1 (S.C.P.S.C. 2017); *IN RE: Petition of the Office of Regulatory Staff to Establish Generic Proceeding Pursuant to the Distributed Energy Resource Program Act*, 2018 WL 488937, at \*1 (S.C.P.S.C. 2018); S.C. Code Ann. Regs. § 103-833; S.C. Code Ann. Regs. § 103-835; Rule 36, SCRC.

II. The burden has not shifted to DESC and DESC has no burden to show that its Discovery Requests are relevant and necessary to the case.

The Discovery Requests are appropriate and serve a legitimate purpose because they seek material relevant to the subject matter in this proceeding in order for DESC to conduct a full examination of the facts underlying Ganymede's claims. *See* S.C. Code Ann. Regs. § 103-833(A); *see also Kramer v. Kramer*, 473 S.E.2d 846 (S.C. Ct. App. 1996). As discussed above, Ganymede failed to make Milestone Payment 2 under the Ganymede IA, which resulted in termination of the same. Ganymede cites certain variable integration charge language (the "VIC Language") in DESC's standard power purchase agreement<sup>6</sup> as the reason that its project was allegedly unable to obtain financing. *See* Petition at 3-4.

DESC propounded discovery to obtain information relevant to the matters of which Ganymede complains, as stated above. Neither the rules and regulations of the Commission, nor South Carolina law requires DESC to accompany its initial submission of Discovery Requests with an appearance before the Commission in order to defend the relevancy and necessity of each of those items. Ganymede seems to think it can impute such a requirement unilaterally—a concept, like many others presented by Ganymede, that is foreign to the rules, regulations, and laws of the state of South Carolina.

Assuming *arguendo* that DESC is required to justify the Discovery Requests in such a way, each of the items in the Discovery Requests would pass the false threshold set by Ganymede. While DESC is under no obligation at this point to explain the appropriateness of its Discovery Requests, DESC will explain the relevancy of the information it seeks in order to assist the Commission and aid judicial economy. However, DESC is seeking from Ganymede recovery of the fees and expenses associated with its Motion to Compel. As such, DESC has

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<sup>6</sup> To date, Ganymede has not executed a power purchase agreement with DESC.

chosen not to incur additional costs and expenses by defending the Discovery Requests line by line in this Reply. Rather, DESC will address three main classes of information it seeks.

- a. *Discovery Requests related to the Ganymede IA are appropriate because it serves as the foundational document from which this dispute arises.*

The Discovery Requests seek information related to the Ganymede IA. Specifically, the Discovery Requests seek, among other things, (i) an admission that Ganymede read the Ganymede IA prior to signing the Ganymede IA, (ii) an admission that Ganymede was aware of the VIC Language in the form power purchase agreement prior to signing the Ganymede IA, and (iii) details about the “public interest” Ganymede believes to exist that would justify the Commission’s revival and amendment of the Ganymede IA. Each of these items are “basic issues and facts”<sup>7</sup> that are relevant and necessary “to promote a full examination”<sup>8</sup> of the claims made by Ganymede because they seek to establish that (i) Ganymede knew of the VIC Language of which it now complains when it signed the Ganymede IA and (ii) that there is no public interest which justifies the relief requested by Ganymede. Ganymede’s outright refusal to substantively respond to questions about the foundational document from which this dispute arises is perplexing.

- b. *Discovery Requests related to Ganymede’s parent company are appropriate because that is the corporate level at which financing efforts were likely coordinated.*

The Discovery Requests also seek information related to Ganymede’s parent company—Cypress Creek Renewables, LLC (“Cypress Creek”). Specifically, the Discovery Requests seek, among other things, information related to (i) Cypress Creek’s involvement in solar projects with power purchase agreements containing identical VIC Language, (ii) Cypress Creek’s ability to secure funding for other projects containing identical VIC Language, (iii) Ganymede’s and

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<sup>7</sup> *In re Anonymous Member* (S.C. 2001).

<sup>8</sup> *Kramer v. Kramer*, 473 S.E.2d 846, 848 (S.C. Ct. App. 1996).

Cypress Creek’s communications with investors as to Ganymede’s project, and (iv) what plan, if any, Ganymede and Cypress Creek have that would render this “now unfinanceable” project sufficiently attractive to investors if the Commission sided with Ganymede and revived, and then modified, the Ganymede IA. Ganymede’s Motion to Maintain Status Quo at 1.

Each of these items are “basic issues and facts”<sup>9</sup> that are relevant and necessary “to promote a full examination”<sup>10</sup> of the claims made by Ganymede because they seek to establish (i) the VIC Language is not the crux of Ganymede’s financial problems because other projects owned by Cypress Creek have obtained financing—despite having identical VIC Language in their respective power purchase agreements, (ii) how Cypress Creek’s efforts to obtain funding for Ganymede differed from its efforts employed for those other projects, and (iii) whether Cypress Creek and Ganymede have a plan to obtain financing in the event that the Commission does grant their requested relief to ensure that they do not end up in front of the Commission again complaining of similar financial problems. Ganymede’s outright refusal to substantively respond to questions about the efforts of its parent company to obtain financing—the precise issue in dispute—is simply disingenuous.<sup>11</sup>

c. *Discovery Requests related to the VIC Language are appropriate because Ganymede cites the VIC Language as the sole reason it has been unable to obtain financing under the Ganymede IA.*

The Discovery Requests also seek information related to the impacts that the VIC Language had on Ganymede’s project. Specifically, the Discovery Requests seek, among other things, information related to (i) discussions with potential financing parties about the VIC Language, (ii) how the VIC Language impacted Ganymede differently than Cypress Creek’s

<sup>9</sup> *In re Anonymous Member* (S.C. 2001).

<sup>10</sup> *Kramer v. Kramer*, 473 S.E.2d 846, 848 (S.C. Ct. App. 1996).

<sup>11</sup> Indeed, Ganymede specifically referenced “Cypress Creek’s experience developing solar projects in South Carolina” in its Petition. Petition at 3. The Discovery Requests simply seek information about how that experience has influenced these matters.

projects that were able to obtain financing, but contained the VIC Language and (iii) how the Commission's establishment of an interim value for the variable integration charge affected efforts to obtain financing under the Ganymede IA. Each of these items are "basic issues and facts"<sup>12</sup> that are relevant and necessary "to promote a full examination"<sup>13</sup> of the claims made by Ganymede because they seek to determine whether the VIC Language adversely impacted financing efforts under the Ganymede IA—clearly relevant to the claims made by Ganymede in this docket.<sup>14</sup> Ganymede's outright refusal to substantively respond to questions about the VIC Language is illogical.

Clearly, DESC requests information related to claims Ganymede has made in its own filings and "material relevant to the subject matter involved in the pending proceeding." S.C. Code Ann. Regs. § 103-833(A). These questions are reasonably calculated to lead to the discovery of admissible evidence and are critical to DESC's ability to defend itself, prepare testimony, and otherwise investigate Ganymede's claims. Clearly, the Discovery Requests are within the permissive scope of discovery. Ganymede has employed a novel and improper burden-shifting technique to force DESC, out of an abundance of caution to yet again demonstrate to the Commission that the Discovery Requests comply with the rules that are applicable to this proceeding. Notably, Ganymede's refusal not only disadvantages DESC in this proceeding, but it also means that the Commission would be forced to decide the merits of the case based solely upon the unsupported allegations contained within the four corners of Ganymede's pleadings. Surely, it cannot be said that such a result would lead to a "fair contest with the basic issues and facts disclosed." *In re Anonymous Member* (S.C. 2001).

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<sup>12</sup> *In re Anonymous Member* (S.C. 2001).

<sup>13</sup> *Kramer v. Kramer*, 473 S.E.2d 846, 848 (S.C. Ct. App. 1996).

<sup>14</sup> "Because of uncertainty regarding the Variable Integration Charge . . . [Ganymede] has been unable to obtain financing." Petition at 1.

III. DESC does not dispute that Ganymede filed a Petition, seeks relief from the Commission, and does not seek relief from DESC.

The Response seems to imply that DESC disputes the procedural posture of this case or the implications thereof. To be clear, DESC acknowledges that Ganymede filed a Petition rather than a Complaint. Indeed, Ganymede named DESC as the Respondent in the Petition. As such, DESC is a party of record.<sup>15</sup> As a party of record, DESC properly filed an Answer and served discovery. *See* S.C. Code Ann. Regs. § 103-826 (“Answers are submitted to the Commission in response to complaints and petitions”) (emphasis added); S.C. Code Ann. Regs. § 103-833; S.C. Code Ann. Regs. § 103-835; Rule 36, SCRPC. DESC further acknowledges that Ganymede seeks relief in this proceeding only from the Commission—just as any party appearing in front of the Commission does. However, these facts, when taken together, do not provide Ganymede with a “get-out-of-jail-free” card to sidestep its discovery obligations. Although Ganymede provided no explanation for why it chose to cite these curious—and obvious—points in the Response, it appears that Ganymede believes the procedural posture of this proceeding lends credibility to its argument that discovery in this proceeding is improper. Ganymede’s logic necessarily means that all parties filing a Petition with the Commission would be excused from producing discovery. Again, Ganymede presents a novel and improper position for the Commission to consider.

### CONCLUSION

DESC provided the Commission with rules, regulations, and case law in South Carolina that clearly establish Ganymede’s obligation to substantively respond to the Discovery Requests. Ganymede has failed to provide the Commission with any “good cause” to bar all discovery in

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<sup>15</sup> S.C. Code Ann. Regs. § 103-804(L) makes clear that parties of record are “entitled to receive all materials, pleadings, orders or other dispositions of matters relevant to the proceeding . . . and will include . . . respondents.” (emphasis added).

this matter—and has clearly failed to provide the Commission with evidence of the potential for abuse or particularized harm required under South Carolina law. *See Hollman v. Woolfson*, 683 S.E.2d 495 (S.C. 2009); *Hamm v. South Carolina*, 439 S.E.2d 852 (S.C. 1994); *Gattison v. S.C. State College*, 456 S.E.2d 414 (S.C. Ct. App. 1995). Because of these tactics, DESC was forced to request yet another extension of the deadlines in this docket because DESC does not have adequate information from which to prepare appropriate and responsive testimony. *See Letter to Hearing Officer*, filed simultaneously herewith, in the above-referenced docket. Denying the Motion to Compel will only sanction the evasiveness and gamesmanship utilized by Ganymede in this docket. Ganymede's efforts have increased the costs of litigating this matter, delayed the time to dispose of this matter—which ultimately hurts other solar developers—and has flooded the Commission with filings to escape producing discovery and ultimately proving its case. For these reasons and the reasons stated above, DESC respectfully requests that the Motion to Compel be granted and DESC be awarded its reasonable expenses in connection with the Motion to Compel.<sup>16</sup> Pursuant to S.C. Code Ann. Regs. § 103-829(B), DESC respectfully requests expedited consideration of the Motion to Compel in advance of any hearing in this docket and at the Commission's earliest convenience.

Respectfully Submitted,

/s/ J. Ashley Cooper

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<sup>16</sup> Upon request of the Commission, DESC will provide the Commission with a statement of its fees and costs incurred in connection with the Motion to Compel.

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Cayce, South Carolina  
February 21, 2020

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
DOCKET NO. 2019-390-E**

IN RE: Ganymede Solar, LLC,	)	
	)	
Petitioner,	)	
	)	
Dominion Energy South Carolina,	)	<b>CERTIFICATE OF SERVICE</b>
Inc.,	)	
	)	
Respondent.	)	
	)	

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This is to certify that I, Ashley Cooper, have this day caused to be served upon the person named below ***Dominion Energy South Carolina, Inc.’s Reply to Response in Opposition to Motion to Compel*** by electronic mail and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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/s/ J. Ashley Cooper

This 21st day of February, 2020